IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 103 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OFGUJARAT

Versus

RAMGOPAL BHAGWANDS

Appearance:

MS HARSHA DEVANI, APP for Petitioner

MR RC KAKKAD for Respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 15/12/2000

ORAL JUDGEMENT

The petitioner-State of Gujarat has preferred this petition against the judgment and order passed by the learned . Sessions Judge, Surat, in Criminal Revision Application No.76/92, dated 3-11-92. Vide said order dated 3-11-92, learned Addl. Sessions Judge,

Surat, allowed the Criminal Revision Application and set aside the order passed by the learned Judicial Magistrate First Class, Surat, upon Application No.300/92, submitted by Ramgopal Bhagwandas Agrawal, whereby he prayed the custody of the mudamal during the pendency and final disposal of the case. The said application came to be rejected by the learned Judicial Magistrate First Class, Surat, vide order dated 24-9-92. Against the said order, the petitioner Ramgopal Bhagwandas Agrawal preferred Criminal Revision Application before the learned Sessions Judge, Surat, and the learned Addl. Sessions Judge, Surat, after hearing respective parties allowed the said Criminal Revision Application by quashing and setting aside the order passed by the learned J.M.F.C., Surat, in Application No.300/92, dated 24-9-92 and directed the Investigating Officer to hand over mudamal to the applicant Ramgopal Bhagwandas Agrawal on usual terms. In pursuance of the said order, mudamal has been handed over to the petitioner on 5-11-92 and threreafter, the State has preferred this petition.

2. I have heard Ms. Harsha Devani, learned A.P.P. for the petitioner and Mr. R.C.Kakkad, learned advocate for the respondent. I have also gone through the reasoned order passed by both the Courts below. I have also called for record and proceeding of Salabatpura Police Station I C.R.No. I 220/92 and perused the same. Learned A.P.P. upon instruction has made a statement at the bar that the mudamal has been handed over to the petitioner on 5-11-92 and after investigation "C" summary report has been submitted by the Investigating Officer into the Court of learned Judicial Magistrate First Class, Surat on 21-12-92 and till this date no order has been passed by the Court upon "C" summary proceeding. So, keeping in mind the fact that the mudamal has already been handed over to the respondent after two days from the date of passing of the order i.e. on 5-11-92 on usual terms and it remained with him and till this date the Court has not permitted him to dispose of the same. Even while doing so, the Court has not restrained the respondent to preserve the same during the pendency of the case. The mudamal being cloth, the same must have been sold out by the respondent and learned advocate for the respondent has stated at the bar that the mudamal being perishable item and, therefore, the same is disposed of. Secondly, when "C" summary report has been filed and waiting the order since last 8 years, it is not useful to pass any order upon this petition at this stage. The trial Court ought not to have allowed Criminal Revision Application in such a manner and the learned Addl. Sessions Judge while allowing the same

ought to have taken into consideration the interest of the other side including the State. On going through the order passed by the learned Addl. Sessions Judge, I prima facie come to the conclusion that it is a very hasty order which is challenged by the State in this petition. But the fact remains that the "C" summary report has already been filed on 21-12-92 and till this date no order has been passed by the Court below upon that proceeding and, therefore, it is not useful to pass any order upon this petition at this stage.

3. As a result of the foregoing discussion, this petition is dismissed. Rule discharged. Interim relief stands vacated. The concerned Court below is hereby directed to dispose of "C" summary proceeding as expeditiously as possible and preferably within one month from the date of receipt of this order. The office is directed to send a copy of this order to the concerned Court below.

(R.P.Dholakia, J.)

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